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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 581

LARRY THEODORE FRENCH,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

JURISDICTIONAL STATEMENT

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Subject Index

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	3
Statement	3
The questions are substantial	4
Conclusion	7

Appendix

Notification of judgment ..... App. A

Table of Authorities Cited

Cases	Page
Bantam Books v. Sullivan, 372 US 58, 9 L.ed.2d 584 (Headnote 1)	2
Connally v. Gen. Constr. Co., 269 US 385, 70 L.ed. 322	6
Blaney, In re, 30 Cal.2d 643	6
In re Lockett, 179 Cal. 581, 178 P. 134	5
In re Newbern, 53 Cal.2d 786	6, 7
In re Peppers, 189 Cal. 682	6
Katsev v. Los Angeles, 52 Cal.2d 360	6
Kraus & Bros. v. United States, 327 US 614, 90 L.ed. 894	5, 6
Lanzetta v. New Jersey, 306 US 451	6
Lockett, In re 179 Cal. 581, 178 P. 134	5
Market Basket v. Jacobson, 134 Cal.App.2d 73	6
Mishkin v. New York, 16 L.ed.2d 56 (Headnote 10)	2
Newbern, In re, 53 Cal.2d 786	6, 7
People v. Bldg. Maintenance etc. Assn., 41 Cal.2d 719	6
People v. Daniels, 168 Cal.App.2d Supp. 788	6
People v. McCaughan, 49 Cal.2d 409	6
People v. Saad, 105 Cal.App.2d Supp. 851, 234 P.2d 75	6
Peppers, In re, 189 Cal. 682	6
Robinson v. California, 370 US 660, 8 L.ed.2d 758 (Headnote 1)	2
United States v. Cardiff, 344 US 174, 97 L.ed. 200	6
Winters v. New York, 333 US 507, 92 L.ed. 840	6

Page

Statutes

Constitution of California
Article 4, Section 24 5

Constitution of the United States
Fourteenth Amendment 2, 3, 4

Penal Code of California
Section 290 4
Section 314.1 ..... 1, 3, 4

United States Code
Title 28, Section 1257(2) 2

Rules

Rules of the Supreme Court of the United States
Rule 13 1
Rule 15 1

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vs.

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JURISDICTIONAL STATEMENT

Appellant files the following jurisdictional statement pursuant to Rules 13 and 15, Rules of the Supreme Court of the United States.

Opinion Below

There was no written opinion in the court below in this matter. A copy of the notification of judgment is attached hereto as Appendix A.

Jurisdiction

Appellant challenged the constitutionality of certain words in Section 314.1 of the Penal Code of the State of California. The judgment was handed down by the Appellate Department of the Superior Court of the State

of California for the County of Los Angeles on June 3, 1966. The notice of appeal was filed July 8, 1966 and the record has been docketed with the Court within 60 days thereof. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, Section 1257(2), U.S. Codes. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case: *Bantam Books v. Sullivan,* 372 US 58, 9 L.ed.2d 584 (Headnote 1); *Robinson v. California,* 370 US 660, 8 L.ed.2d 758 (Headnote 1); *Mishkin v. New York,* 16 L.ed.2d 56 (Headnote 10).

Questions Presented

1. Whether the words "willfully" and "lewdly", inherently and as construed and applied in this case, are so vague, indefinite and uncertain as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether the words "private parts", inherently and as construed and applied in this case, violate the due process clause of the Fourteenth Amendment to the Constitution of the United States by reason of the vagueness, indefiniteness and uncertainty of the statute and its failure to set up guidelines.

3. Whether the acts charged here constitute willfulness.

4. Whether the acts charged here constitute lewdness.

5. Whether the acts charged here constitute an exposure of private parts.

Statutes Involved

Fourteenth Amendment, United States Constitution:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 314.1, Penal Code of California:

> "Every person who willfully and lewdly, either
>
> "1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; . . . is guilty of a misdemeanor. . . ."

Statement

Appellant was arrested on a charge of violating Section 314.1 of the Penal Code of the State of California.

A woman claimed to have seen appellant with his pants unzipped and his penis exposed as she walked along the street about 5:30 in the afternoon. There were no statements made, no gestures, and, according to her testimony, the organ was flaccid. (R.T. 62) She said she went in to call the police and when she came out and was across the street, she saw the same thing. She thereafter followed the gentleman to get the license number of his automobile. He was carrying some bakery goods from a nearby bakery.

Appellant vigorously denied the charge made by the lady and denied any intent of any kind. The lady witness was a middle-aged woman, while appellant's wife is a young woman of about 22, appellant being 31 years of age. Appellant (a defense worker) and his wife live in the neighborhood of the alleged occurrence and he had stopped on his way home at a bakery on a corner nearby.

Appellant was found guilty on one count, was given summary probation and fined $100, which fine and sentence carries with it a requirement of registration under Section 290 of the Penal Code of the State of California. The judge ordered registration suspended unless the judgment became final.

The Questions Are Substantial

At the trial, appellant challenged the constitutionality of the words "willfully", "lewdly", and "private parts", as being too vague, indefinite and uncertain as to constitute a criminal offense under the Fourteenth Amendment to the Constitution of the United States. His challenge to the statute was overruled in the trial court and in the appellate court.

Appellant also raised the question of the vagueness and indefiniteness of the statute on motion for new trial, as violative of due process of law under the Fourteenth Amendment to the Constitution of the United States. His motion was denied.

Appellant contends that Section 314.1, inherently and as construed and applied in this case, fails to set up any guidelines or definition as to what constitutes lewdness and what constitutes willfulness and lewd conduct. He

also challenged the words "private parts" as having no definition as to whether they meant sexual organs or some other parts of the body, and that the statute did not spell out when and how it would become a public offense.

Appellant again raised the questions in the Appellate Department of the Superior Court, the last court to which the question could be taken, and that court overruled his claim of unconstitutionality on the grounds of vagueness and indefiniteness.

In *Kraus & Bros. v. United States,* 327 US 614, 90 L.ed. 894, the Court said that the language used must be explicit and unambiguous: "They must adequately inform those who are subject to their terms what conduct will be considered evasive so as to bring the criminal penalties of the Act into operation. . . . The dividing line between unlawful evasion and lawful action cannot be left to conjecture . . . patent omissions and uncertainties cannot be disregarded when dealing with a criminal prosecution."

In Article 4, Section 24 of the California Constitution it is stated that all laws must be published in no other than the English language. Implicit in this provision is that it must be English language that is clearly defined and clearly set forth and clearly understood.

In re Lockett, 179 Cal. 581, 178 P. 134, held unconstitutional a sexual act which was expressed in Latin words. Nevertheless, there is no reason why the Legislature could not have specified exposure of the penis or exposure of the vagina or exposure of the teats or whatever private part the Legislature intended to make

specifically a crime. Without it, the words "private parts" are too vague and indefinite to constitute a standard of guilt.

The leading cases on this subject are: *Kraus & Bros. v. United States,* 327 US 614, 90 L.ed. 894; *Connally v. Gen. Constr. Co.,* 269 US 385, 70 L.ed. 322; *Lanzetta v. New Jersey,* 306 US 451; *In re Blaney,* 30 Cal.2d 643, 656; *People v. Saad,* 105 Cal.App.2d Supp. 851, 234 P. 2d 75; *Market Basket v. Jacobson,* 134 Cal.App.2d 73; *People v. Bldg. Maintenance etc. Assn.,* 41 Cal.2d 719, 725; *United States v. Cardiff,* 344 US 174, 97 L.ed. 200; *Winters v. New York,* 333 US 507, 92 L.ed. 840; *People v. McCaughan,* 49 Cal.2d 409, 414; *Katzev v. Los Angeles,* 52 Cal.2d 360; *In re Newbern,* 53 Cal.2d 786, 792; *In re Peppers,* 189 Cal. 682.

In the former vagrancy statute which preceded Section 314, a common drunkard was declared to be a vagrant and in *People v. Daniels,* 168 Cal.App.2d Supp. 788, 802, the appellate court thought that the term was susceptible of a reasonable interpretation and that uncertainties had been resolved by judicial decision. However, in *In re Newbern,* 53 Cal.2d 786, the Supreme Court held the provision unconstitutional on the following grounds:

(1) "Common" and "common drunk" are subject of numerous conflicting dictionary and judicial definitions, hence have no certain ordinary meaning. This is equally true of the words "private parts", which have various and sundry definitions of the words "parts" and have a general definition even in the larger unabridged dictionary.

(2) In *In re Newbern, supra,* the court held that the words are not medical terms and have no established technical meaning. Likewise, the words "lewd" and "private parts" have no medical meaning and no established technical meaning.

(3) They have no common law meaning.

On the basis of the *Newbern* case, we submit that the statute is unconstitutional.

Conclusion

For the reasons stated, the questions presented by this appeal are substantial and are of public importance. It is respectfully submitted that probable jurisdiction should be noted.

MORRIS LAVINE

Attorney for Appellant

APPENDIX A

Appellate Department

SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA

No. CR. A. 6870

People vs. French

Judgment and Order in the above entitled appeal are affirmed. Judgment filed.

Date June 3, 1966

WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles

By J. MacGREGOR, Deputy